Toronto. Planning and Development Department.

FURTHER REPORT ON THE DENSITY TRANSFER POLICY REVIEW

June 2, 1987

METROPOLITAN
TORONTO
LIBRARY
Municipal Reference

CITY OF TORONTO
PLANNING AND DEVELOPMENT DEPARTMENT

510/04205
CC&W/Midtown
June 2, 1987
Barbara Leonhardt
392-7355

To: Land Use Committee

Subject: Further Report on the Density Transfer Policy Review.

Origin: Land Use Committee, September 24, 1986 (c71luc87336:126)

Comments:

1. SUMMARY

THE REQUEST: This report responds to your Committee's request for a further report on Density transfers, and in particular that I report on two submissions made by Michael Beatty of Royal LePage.

RECOMMENDATION: This report recommends that the City Solicitor bring forward draft by-laws to implement the proposed Official Plan amendments outlined in the June 1986 report of the Commissioner of Planning and Development, with minor amendments.

2. BACKGROUND

At its meeting of September 24, 1986 the Land Use Committee had before it three reports from the Commissioner of Planning and Development respecting density transfers:

1. Density Transfer Policy Review: Summary and Recommendations, (June 4, 1986)

2. Density Transfers - Policy Review and Recommendations (June 1986), and

3. Density Transfers - A Comparative Analysis of Density Transfer Policies in several North American Cities (June 1986) (prepared by Berridge Lewinberg Associates).

The Committee was in receipt of a communication from Michael Beatty dated September 22, 1986. Mr. Beatty also addressed the Committee, at which time he filed a further submission. The Committee decided to defer consideration of the reports and "requested Commissioner of Planning and Development to report as soon as possible on:

1. the two submissions from Michael Beatty, Associate Broker, Royal LePage.

2. on the appropriateness of the title Density Exchanges vs. Density Transfers and on the use of the appropriate title for each application

3. on why hotels were originally excluded from financial districts and whether this exclusion would still be appropriate

4. on strategies to avoid inappropriate land assemblies as they relate to density transfers and to avoid situations where minority property holders on any given block are potentially sterilized through transfers."

This report responds to the first, second and fourth requests of the Committee. Item three will be dealt with in a subsequent report.

The Committee had also requested that the Commissioner of Planning and Development report, in consultation with the City Solicitor, on opportunities to use density transfers as an instrument to achieve a variety of other objectives, other than planning objectives. This request was the result of a motion by Alderman Martin, who was requested by the Committee to provide the Commissioner of Planning and Development with the details of this request in writing. A report on this matter will be prepared following receipt of the letter clarifying the request, however some preliminary comments on the use of density transfers as a policy instrument are also set out in this report.

3. SUBMISSIONS OF MICHAEL BEATTY

In his presentation to the Land Use Committee, Michael Beatty made two submissions. The first dealt with an alternative to the density transfer proposal recommended by the Commissioner of Planning and Development. The second submission consisted of a commentary on the disadvantages of density transfers that had been identified in the reports of the Commissioner of Planning and Development. The two submissions are discussed below.

3.1 The Alternative Proposal

The summary of Mr. Beatty's proposed alternative density transfer policy's contained in Appendix 1. The salient features of the proposal are:

a) to permit exchanges of density (commercial and residential) between two or more lots located in any mixed use district of the Central Area, including Low Density Mixed Commcercial Residential Areas;

b) there would be no restriction on the size of the lots, and the lots could be separated by a distance of up to 2000 metres (1.25 miles);

c) the maximum densities on each lot would be restricted by its mixing formula constant; and

d) there would be options for: substituting a surrogate housing site for the residential density if the receiving lot was inappropriate for housing; making a cash-in-lieu payment to a City approved agency; or a commitment to provide for some other City objective (such as heritage preservation or a community facility).

The alternative proposal would clearly have very broad application throughout the Central Area, which, as Mr. Beatty suggests in his letter of September 22, 1986 (Appendix 2), is what is intended: "I feel that the Official Plan Part I did not provide adequate provision and flexibility for all the landowners to select the most appropriate and viable use for their site".

Rather than address the specifics of Mr. Beatty's proposal, it is important to consider the assumptions upon which it is based, and in particular to evaluate what it is intended to achieve. An examination of the specifics would only be useful in this context. Mr. Beatty's assumptions and intent are clearly stated in his letter of September 22nd and it is not therefore necessary to infer these from the actual proposal.

3.1.1 The Intent

Mr. Beatty remarks that the concept of mixed-use was, ten years ago, a "stroke of genius", and that it was essential to the Central Area's survival. But, he also states that in his opinion it was unrealistic to expect all lands so designated to develop in this manner. In his deputation before the Committee, Mr. Beatty referred to several areas in particular where he felt this was unrealistic: The Financial District, the Bay/College area and the subway nodes at Dundas and College. Mr. Beatty feels that the Plan should contain flexibility for owners in those areas to develop their property for

purely commercial use, because it is 'desirable' that those areas be largely commercial and 'unrealistic' to expect them to be mixed-use.

In the final analysis, what Mr. Beatty appears to be suggesting is that certain parts of the Central Area are inappropriately designated. To redress this situation, he proposes a density transfer policy that is designed to allow the market place to correct this "inappropriate" land use strategy. The entire proposal is predicated on this assumption, although it is couched in the assertion that there is a general need to provide equity and flexibility for land owners, large and small.

Mr. Beatty maintains that the existing and proposed new small sites density exchange policy discriminates between large and small sites, and that this is, by definition, unacceptable. The small sites policy applies only to small sites precisely because it is those sites that do not have the full range of development opportunities offered by the Plan. It is not intended to provide opportunities for land owners to retreat from the mixed-use objectives of the Plan. The policy is intended to address situations where a development option available to all other owners (i.e. maximizing development potential through mixed use development), is, for reasons of site constraints, not reasonably available to owners of small sites. The small sites policy does not challenge the appropriateness of the land use strategy, but is designed specifically to reinforce a fine grain of mixed use throughout the Central Area. It is an instrument by which to extend the full range of development options generally available to large sites, to owners of small sites.

Mr. Beatty's proposal, on the other hand, directly challenges the land use strategy of the Central Area Plan; he basically asserts that the relatively fine grain of mixed use development encouraged by the Plan is inappropriate in certain areas.

A density transfer is a useful policy instrument to promote a planning objective in situations where conventional tools may be unsuccessful (as in the case of small lots policy). It is entirely inappropriate, however, to apply the instrument so as to undermine the basic planning strategy reflected in the existing designations. If the planning strategy is ill conceived or in need of refinement, then it should be subjected to a through planning analysis and evaluated as a whole. An

elaborate system of density transfers to undermine the strategy is neither responsible nor ultimately defensible. Moreover, such a policy would have very serious impacts on other planning policies and on the land market.

3.1.2 The Impact of the Proposal

Mr. Beatty's proposal would effectively allow density transfers to proceed virtually undirected and unencumbered within the Central Core. Market forces alone would direct where density is likely to move. This being the case, one can reasonably assume that the Financial District, followed by certain of the High Density Mixed Commercial-Residential Areas, would become magnets for commercial density, which would be siphoned off the Low, Medium and some High Desity Mixed Commercial-Residential Areas. As a result, one could expect a number of effects.

(a) As noted above, in Section 3.1.1 the basic mixed use strategy, to promote a relatively fine grain of mixed use throughout the Central Area and Core, would be undermined.

(b) There would be less predictability and certainty about what the areas giving up commercial density would be like in the future, depriving land owners in those areas of a degree of certainty that is normally associated with the Plan, or any plan, and eroding confidence in the planning process.

(c) The proposed policy would effectively permit 12 times commercial coverage in the Financial District; no planning assessment of the implications associated with this result has been presented.

(d) Alarming market distortions could result. In areas likely to be 'giving up' commercial density, to be transferred to a site where commercial density is more valuable, the value of the density rights at the donor site would no longer reflect the value at that location, but some other theoretical potential that would also relate to a market in density rights for the sites of highest value. Accordingly, there would be speculative pressure on the price of land in those areas where currently commercial density potential is generally low.

None of the effects described above would be desirable, either from a planning point of view or from the perspective of the land market. In fact, the proposed alternative policy does not appear to have any planning basis. In developing a planning strategy, uses and density are allocated on the basis of a series of goals and objectives and on an analysis of constraints (transportation, services etc.) of that area or areas. When development rights can travel long distances, across planning districts, and virtually with no restrictions, this planning basis is not merely called with question, it is fundamentally subverted. As the Honourable Bernard Grandmaitre, Minister of Municipal Affairs has recently suggested in a speech before the UDI, the municipalities in their planning processes have an obligation to provide greater, not less, certainty.

3.2 Mr. Beatty's Comments on the Staff Report of June, 1986

Mr. Beatty also submitted a critique of the June 1986 report, addressing seven issues raised in that report. Your Committee has requested that I respond to these points. These are attached as Appendix 3, and are discussed below.

(a) Balance of Uses

In the June 1986 report I noted that density transfers could, if broadly applied, undermine the balance of uses (i.e. mixed use development) that the Plan seeks to achieve. This is in essence what I have restated in this report, in the previous section. Mr. Beatty takes issue with this statement, and asserts that there is a growing imbalance between the achievement of affordable housing versus market housing and that the Plan's objectives in this area are not being met. It is suggested that the alternative proposal could serve to correct this imbalance.

It appears that there may have been some confusion about the meaning of the "balance of uses". My reference to balance of uses refers to the objective of promoting a fine grain of mixed use develoment throughout the Central Area. This is quite distinct from achieving a balance between affordable and market housing. These were both important Plan objectives, and as noted in the recent Quinquennial Review, while the mixed use objectives have been very successful, there is a need to develop further

initiatives that will promote the production of affordable housing. While this need is real and pressing, it is not an objective that should be achieved, at the cost of undermining another fundamental objective of the Plan which is to encourage mixed use. I will be reporting in the near future on options to increase investment in and the production of affordable housing.

(b) Transportation Balance

It had been noted in the June 1986 report that density transfers could potentially upset the local transportation balance. In developing a planning strategy, one of the elements of an analysis is an assessment of the adequacy of services, such as transportation, to accommodate the planned growth. In short, there is implicit in any planning strategy, a general balance between growth and transportation, among other services. Density transfers, by allowing density allocated to one local area on the basis of such an analysis, to move to another local area, especially where the distance is great, can clearly upset the local balance of between growth and services, including transportation services.

Mr. Beatty asserts that this would not be the case. However, as an example, under his own proposal where as he states, "the office development trend is favouring the Financial District", the market would dictate that the Financial District would be the major beneficiary of commerical density transferred from elsewhere within the Central Area, (along with nodes at Dundas, College and Bloor). Under this scenario, virtually any Financial District property would immediately be eligible for 12 times commercial coverage through a transfer. One simply cannot assume, under these circumstances, that the transportation impacts would be completely neutral.

(c) The Rate of Growth and Deconcentration

Another potential disadvantage of density transfers cited in the June 1986 report related to the potential impact of density transfers, if permitted at a significant level, on the rate of development and, in turn on the deconcentration policy. Mr. Beatty suggests that there could be no supply side effects created through a broad density transfer

program, but that future office development will be fuelled only by demand.

I cannot agree with Mr. Beatty. Office development is driven by a number of factors including employment growth, changes in the employment structure, the overall health of the economy, as well as the level of development rights available in an area. At the Railway Lands hearing it was argued, and the Ontario Municipal Board accepted, that the increased levels of development permitted by the Railway Lands Part II Plan, may accelerate the rate of office growth in the Central Area by 10%, and accordingly may have the effect of moving back the time frame for needed transportation improvements. In the 1986 Quinquennial Review it was noted that at this mature stage in the deconcentration strategy, its success was no longer critically dependent on potential levels of office development in the Central Core, however, the timing of major transportation improvements remains central to the policy of deconcentration.

The effect of a broad density transfer program, where the scale of density transfers could be significant, all other things being equal, could be to accelerate the rate of growth and move the time frame for the needed transportation improvements closer.

This effect may be considered an acceptable trade-off only in exceptional situations where City Council is satisfied that some significant benefit can be realized or goal achieved, not, as Mr. Beatty proposes, as a general rule.

(d) The Effect of the Land Market

In the June 1986 report, and earlier in Section 3.1.2 of this report, I discuss the potential impact on the land market of unrestricted density transfers, and in particular of transfers that can be effectuated over long distances. Mr. Beatty argues that a freer density transfer policy, along the lines he has suggested, would not engender distortions in the land market. Perhaps what is at issue here is what is meant by 'distortation of the land market'. There can be little doubt that the land market as we know it today would be affected by such a program. Mr. Beatty himself notes that a

potential effect of competition for density rights, should they become generally available as under his proposal, would be a general lowering of costs. The same effect could be achieved, of course, by redesignating the Financial District for 12 times commercial coverage. In both instances the cost of producing space would be lowered.

But what other effects would flow from a free market in density rights? In instances where the 'equilibrium price' as determined by the 'market' for a square foot of commercial density was greater than the value of the density at any given location (i.e. the areas of remote commercial development potential), then the value of land at that location would tend to reflect the 'equilibrium price' and not the real value at that location.

It is generally acknowledged in the literature on the subject, that it is very important to ensure that in any individual transaction, the value of the density rights bears a satisfactory relationship to the fair market value of the land to which it is attached, which is to say the value of the density if it were constructed at its original location. Where this does not occur, distortions in values will result.

There is another important potential market 'distortion', however, which could have serious planning consequences. An example may help to illustrate the problem. Assume there are three sites (or categories of sites) entering the density rights market. Site A is in an area of high commercial activity, such as the Financial District; Site B is intermediate (say for example Bloor and Yonge) and Site C is in an area least attractive for commercial development under current market conditions. For the sake of argument, assume that a square foot of commercial density is worth $35 at site A, $23 at site B and $15 at site C when a 'free' density transfer policy is introduced. The 'market' will determine an equilibrium price for density based on supply and demand. If that price is greater than $15 per square foot, there would be upward pressure on land values in the site C category. If it were say $20 per square foot, there would also be serious consequences for values in the intermediate B category. At that price, the prospect of purchasing density is only marginally

attractive to site B, but very attractive to site A. As a result, sites in the A category can purchase density rights with minimal risk, at 'lower cost' and increase the supply of space in category A. This will tend to lower the rents in this category and will in turn make category B space less attractive. B sites are then even less able to compete for density in the 'free' market. The result, as noted previously, would be a tendency for all density to migrate to the Financial District, at the expense of other commercial areas. One may disagree that this is a 'distortion' of the land market (the market after all will continue to function) but is is certainly a very different market than we know today, and one that would become the engine of an entirely new plan for the Central Area, not driven by planning principles but by market imperatives.

(e) 'Unresolved' Housing Sites and the Hard/Soft Analysis

Two additional areas of concern related to density transfers were identified in the June 1986 report, with which Mr. Beatty disagrees.

The first has to do with the possibility of having 'unresolved' housing sites through density transfers under the small sites policy where the comercial building is likely to be built, but the housing site is not developed. Mr. Beatty attributes the problem to the limitation of the 150 metre distance rule; if the density could travel far enough, then the residential density could be 'matched' with a site where the market favoured housing, and it would get built. This argument is based on the same assumptions previously described: 1) the market should determine the most appropriate land use strategy, and 2) the existing planning strategy for the Financial District, and other parts of the Central Core, is inappropriate. I can only reiterate that I do not share these views and that if Council finds merit in this assessment, then there are far simpler mechanisms to achieve the market's objectives than an elaborate and wide open density rights transfer scheme.

The final concern raised in the June 1986 report in connection with transfers of density related to one of the assumptions upon which the original density

allocations were made in the Central Area Plan. (This so called Hard/Soft analysis was explained in some detail in the 1986 Quinquennial Review.) In the June 1986 report the view was expressed that care should be exercised in formulating any density transfer program, to ensure that the original assumptions of the Plan, including those of the Hard/Soft analysis, not be inadvertantly undermined. In particular, the original analysis had assumed that, in general, under the proposed 8 times commercial coverage of the Financial District, buildings that were already built to 6 times coverage or more would not likely be redeveloped during the short or medium term. While the assumption has not necessarily proven correct over time, (the Lord Simcoe Hotel at 12 times coverage, for example was redeveloped in the past ten years) policies that would encourage either the premature redevelopment of those sites or the use of the residual density associated with those sites (which would essentially have the same effect as their redevelopment) would not be appropriate. Mr. Beatty appears to take issue with this aspect of the Plan as well, although his actual proposal contains a requirement that buildings containing greater than 70% commercial not be eligible for a transfer, which is consistent with my own proposal.

3.3 Conclusion

It is clear from the two submissions of Michael Beatty that, in his view, several elements of the Central Area Plan require revision. In particular he disputes the appropriateness of the planning strategy for the Financial District and certain of the High Density Mixed Commercial-Residential Areas, on the grounds that they do not correspond to market expectations. The Plan, in his opinion, should be made more flexible to allow all "landowners to select the most appropriate and viable use for their site." To achieve this, a very broad density transfer program is proposed that would have the effect of allowing the market place to determine the most "appropriate" location for commercial and residential uses. If this proposal can be said to have an implicit planning strategy, it is to circumvent the mixed-use objectives of the Plan which anticipate a fine grain of mixed use throughout the Central Area and Central Core, by creating areas of homogeneous development. It also is predicated on the Financial District densities being generally 12 times coverage commercial. Both of these

effects would have serious implications for the future of the Central Core. However, even if this alternative future were considered desirable by City Council, after a full planning analysis and assessment, it would be totally inappropriate to seek to achieve that objective through the wide open density transfer program proposed by Mr. Beatty.

4. THE APPROPRIATENESS OF THE TITLE "DENSITY EXCHANGE"

In his submission to the Land Use Committee, Mr. Beatty, suggested that a more appropriate title for the small sites density transfer policy would be a "density exchange" policy, since density moves both ways under the policy as residential density is exchanged for commercial. Your Committee requested that the Commissioner of Planning and Development report on the appropriateness of that title.

I agree that the title is appropriate. In fact, page 20 of the June 1986 Policy Review and Recommendations Report, it is noted that the small sites policy "was designed to be an exchange of densities so that, at least on an area basis if not on every lot, the mixed-use objectives might be secured." Accordingly, on page 27 of the same report a revised section 3A.5 (f) is proposed, entitled "Density Exchange for Small Sites", and the section clearly states that Council will allow for an exchange of development rights.

5. STRATEGIES TO AVOID INAPPROPRIATE LAND ASSEMBLIES

Your Committee also requested that I report on means to avoid situations where "minority property holders on any given block are potentially sterilized through density transfers." At the outset, it is important to note that risks associated with land assembly, for both the assembler and the "hold out", are not restricted only to situations involving density transfers, but can occur even in as-of-right developments.

A 'classic' example of this exists in the One Park Lane development block, where the entire block bounded by Dundas, St. Patrick, Elm and Simcoe, with the exception of the small Dell Tavern at the corner of Elm and Simcoe, was assembled under one ownership. Many attempts were made to acquire the property or come to an agreement over joint development, but these efforts failed. In the end, the development proceeded and the Dell Tavern was left isolated.

Ultimately, the City cannot compel an owner to purchase a "holdout" in an as-of-right situation. It is extremely difficult even in a rezoning situation, where the monopoly

position of a hold out is enhanced where pressure from planners to assemble has been clearly articulated.

The way in which density transfers may differ from other situation (as-of-right, or a rezoning for increased density for example), is that the ability of a developer to acquire density from elsewhere undercuts rather than enhances the monopoly position of a hold out. Rather than being able to force the developer to pay more than market value to acquire additional density (which he may be prepared to do at the margin), the 'holdout' is in the position to ask no more than fair market value or else lose the sale.

While density transfers have this characteristic, it is not necessarily inevitable that inappropriate land assemblies result, and certainly it is important that every effort be made to prevent parcels of land from being isolated without reasonable development alternatives.

In as-of-right situations, of course, the City has little power to influence assembly. In rezoning situations, and every density transfer must proceed by way of a rezoning, Council does have some discretion and authority which can be exercised to avoid inappropriate land assembly. In these instances it is important that planning staff assess the development options for lots that may appear to be either isolated or which logically should be part of a larger redevelopment. This analysis should include a review of all development scenarios available to the owner of such lots in the absence of an assembly, and an assessment of the viability of a development proceeding on its own. This information would then form part of the supporting material upon which City Council bases its decision on the appropriateness of a proposed rezoning (whether or not it included a density transfer).

6. DENSITY TRANSFERS AS AN INSTRUMENT FOR OTHER OBJECTIVES

The Land Use Committee requested that the Commissioner of Planning and Development, in consultation with the City Solicitor, report on opportunities for the use of density transfers as an instrument for achieving a variety of City objectives, other than planning objectives. As this motion was made by Alderman Martin, he agreed at the time to convey, in writing, the details regarding this request. I will, of course, report more fully upon receipt of this letter outlining the request, but at this time I would like to make a number of preliminary and general comments on the use of density transfers for broader City or even "planning" objectives.

For the purposes of this discussion, it is useful to begin with the origins of density transfer, or TDR (transferable development rights) programs. TDR evolved historically to fill a gap where traditional land use instruments had failed to prevent the loss of a variety of natural and man made resources, for example heritage buildings. Instruments such as zoning (including bonusing) could not compel preservation, neither could they be used, for reasons of equity, to remove development rights generally accorded to all other land owners in a given area. Expropriation, if it were applicable at all in instances of heritage preservation, has become too expensive, especially in high growth downtown areas where these resources were most threatened.

The major attraction to the TDR concept was its role in offsetting economic hardships incurred by private market landowners as a result of public policy (i.e. amenity or heritage preservation objectives or in the case of the small sites policy, the objective of promoting a fine grair of mixed-use development). This is the major feature and advantage of this policy instrument, and it has been, I believe, appropriately applied in the two proposed policies contained in the June 1986 report. As a policy instrument, density transfers make good planning sense when applied in certain circumstances where other instruments have failed. A density transfer program is not a substitute for a planning strategy nor for other traditional planning instruments. John J. Costonis, widely regarded as the 'father' of the TDR concept and still one of its staunchest proponents, has noted that it would be the "height of folly" to push for grandiose transfer schemes where TDR would be used to achieve all manner of planning goals. (Costonis; TDR: The Perspective of a Decade, April 1980). If density transfer programs are to be expanded, it must through controlled and limited experimentation so that its possibilities and limitations can be carefully assessed and with the origin of the policy instrument in mind.

As a final thought, I would note that a serious planning exercise does not begin with a search for opportunities to use any particular planning instrument. It begins with the development of an overall planning strategy, that is, the characteristics, goals and objectives that are to be achieved. The next step is to determine how best this strategy can be implemented. Where traditional planning instruments are ineffective in achieving certain objectives, it may then be appropriate to consider more unconventional measures, such as density transfers.

7. THE PROPOSED DENSITY EXCHANGE AND TRANSFER POLICIES

This report responds to the requests of the Land Use Committee at its special meeting of September 24, 1986. In that report I recommended a revised small sites exchange policy and a new heritage transfer policy. The revised small sites policy would clarify the intent of the original policy while providing greater flexibility for its application in appropriate circumstances. More particularly, the June 1986 report proposed an exchange policy in which:

a. the intent of the policy to achieve mixed-use development would be clarified and contained in the policy itself;

b. the lot size remains .4 hectares;

c. the 150 metre distance limit remains unchanged;

d. more than two lots may be involved in an exchange of densities;

e. the lots must be located with a Medium Density Mixed Commercial-Residential or High Density Mixed Commercial-Residential Area or the Financial District, but do not all have to be in the same designation;

f. the density on any lot is limited by the mixing formula constant for that lot;

g. conventional housing units or residential fsi density may be transferred;

h. all other conditions of the policy remain; and

i. a 5 year review of the policy is required.

The June 1986 report also proposed a heritage transfer policy that in many respects paralleled the small sites exchange policy in terms of number of sites, distance between sites, Plan designations and density limits. The heritage policy however, also contained provisions designed to secure the future of the heritage property and allowed for density calculations to include the historic bonus.

I have given further consideration to the small sites exchange and heritage preservation transfer policies proposed in the June 1986 report, both in view of comments made at the September 24, 1986 meeting of the Land Use Committee, and as a result of additional comments made directly to planning staff in discussions of the potential application of the policies.

As a result, I remain satisfied that the revised small sites density exchange policy is both viable and appropriate to achieving its intended goal. Further consideration of the heritage transfer policy, however, has led to the conclusion that a minor revision to the proposal may be in order. The proposed small sites exchange policy is reproduced in the recommendations as it was proposed in the June 1986 report. The heritage transfer policy set out in the recommendations reflects the minor revisions discussed further below.

7.1 Changes to the Heritage Transfer Policy

As discussed in the June 1986 report, the 150 metre distance between a heritage donor lot and any receiving lot was selected in part because it paralleled the small sites exchange policy, but also because the distance was an appropriate means "to safeguard against negative transportation impacts of a transfer and a reasonable way of minimizing potential distortions in land values" (p. 36). In the case of the small sites exchange policy the 150 metre distance has another important function directly related to the policy intent - it ensures that a fine grain of mixed-use will continue to be promoted. This intent is not relevant to the heritage preservation policy, where the objective is quite different and the distance limit therefore does not serve this function.

In the heritage preservation context, the distance limitation is a simple but somewhat crude means of moderating two potential negative impacts related, as noted above, to transportation capacity and the land market. At the same time, if a heritage preservation transfer policy is to be successful, it must be able to be used. Practically speaking, this means that the policy must ensure that there are sufficient TDR eligible receiving lots to provide a reasonable marketplace for the density rights of the heritage property. It has been argued that in some cases 150 metres may be inadequate to ensure that a local market for the rights readily exists and therefore that a transfer can reasonably be achieved.

To the extent possible density rights should remain in the area to which they have been allocated if the planning basis upon which the allocation was originally made is to have any integrity. As a general rule, therefore, the 150 metres is both reasonable and appropriate. However, it may be desirable to allow for some flexibility in this distance measure provided certain criteria related to transportation impact and land values can be met. I am therefore proposing that

the heritage transfer policy proposed in the June 1986 report be amended by adding the following:

Council may consider distances between the designated lot and any receiving lot in excess of 150 metres provided:

i) Council is satisfied that the transportation system serving the receiving lot will not be adversely affected by the transfer and;

ii) Council is satisfied that the price of the density rights to be transferred bears a satisfactory relationship to the fair market value of the land and that this price also bears a satisfactory relationship to the value of density rights at the receiving lot.

Finally, there is one additional minor matter respecting the heritage transfer policy that requires further clarification. In the June 1986 report, the possibility of allowing residential density to be transferred back to the heritage lot from the receiving lots was discussed. In general it would be reasonable to allow for this possibility, provided the Plan did not permit the residential density to be built unless the heritage building was destroyed by an Act of God. While this was recommended in the June 1986 report, the actual text of the proposed policy did not reflect this. I am therefore recommending below a policy which contains this minor revision.

RECOMMENDATION:

That the City Solicitor be requested to submit a draft by-law giving effect to the amendment to the Official Plan by:

a) Deleting Section 3A.5(f) and inserting a new Section 3A.5(f) substantially as follows:

3A.5(f): Density Exchanges for Small Sites

In order to assist in achieving the mixed-use objectives of the Plan and in particular, to realize the housing potential of the mixed commercial-residential areas, and in order to provide for the efficient development of those small lots within High or Medium Density Mixed Commercial-Residential Areas or the Financial District where mixed-use development may not readily be achieved, Council may, by by-law, allow an exchange of development rights between two or more small lots in accordance with this Section. Notwithstanding any other provision of

this Plan and upon application by the owners of the lots, Council may pass by-laws to permit commercial floor area, or conventional housing units, or residential gross floor area, as the case may be, permitted by this Plan on one lot, to be transferred in whole or in part and erected or used on another lot or lots provided that:

i) the aggregate of the commercial floor area and residential floor area or number of conventional housing units permitted on all the lots to which such by-law applies does not exceed the sum of the commercial floor area, residential floor area or number of conventional housing units permitted on each such lot by Section 3A.2(b), 3A.3(b) or 3A.4(b) as the case may be;

ii) a by-law has not been previously passed under this Section and approved by the Ontario Municipal board which applies to any of the lots;

iii) the lots involved are small lots, none of which exceeds 0.4 hectares in area (for the purposes of this Plan, the area of any parcel of land which abuts any of the lots at any point shall be included in calculating the area of those lots, if the owner or owners of the lot owns a legal or equitable interect in the parcel, is the beneficiary of a trust in respect of the parcel, or owns or is beneficiary of a trust of shares in the capital stock of a corporation which owns a legal or equitable interest in the parcel for the benefit of which such an interest is held);

iv) to ensure the mixed-use objectives are achieved on an area basis, to minimize transportation impacts and to ensure minimum distortions in the land market, at least one point of the boundary of each lot is not further than 150 metres from one point on the boundary of any other lot to which density is being transferred;

v) the by-law prohibits the erection of a building on each lot in which the commercial density and the residential density or residential fsi density exceed the limits determined by the mixing formula as set out in Section 3A.2(b),

Section 3A.3(b) or Section 3A.4(b), in the case of a lot located in a Medium-Density-Mixed Commercial-Residential-Area, High-Density-Mixed Commercial-Residential--Area, or the Financial District, respectively;

vi) at the time of the passage of such by-law, no lot from which commercial-floor--area will be transferred contains a building in which the commercial-density exceed 0.7 times the maximum commercial--density permitted on that lot by this Plan;

vii) prior to passing the by-law referred to in this Section, Council has given consideration to requiring that the commercial-density in excess of that permitted prior to the by-law on the lot or lots to which commercial-density is being transferred, not be permitted to be built until such time as the residential-floor-area or conventional-housing-units permitted by the by-law are erected; and

viii) any application made under this Section is accompanied by detailed plans and drawings for the development of each lot to which the by-law will apply.

Council shall review the effectiveness of this Section in achieving its objective every five years and determine on the basis of that review, whether amendments to this Section are appropriate.

b) Inserting new Sections 1A.42(e) and 1A.42(f) substantially as follows:

1A.42(e) Notwithstanding any other provisions of this Plan, with the exception of Section 1A.42(a) and 1A.42(b), upon application therefore by:

(a) the owner of a lot (hereinafter called the designed lot) located in the Central--Core and located in either a Medium or High-Density Mixed-Commercial-Residential-Area, or in the Financial---District, which lot comprises a designated property within the meaning of the Ontario Heritage Act, and

(b) the owner of another lot or owners of other lots located in the Central--Core and located

either within a Medium or High Density Mixed Commercial-Residential Area or within the Financial District (hereinafter called the "receiving" lot or lots),

Council may pass by-laws applicable to the designated lot and the receiving lot or lots to permit commercial gross floor area which is permitted to be erected and used on the designated lot to be transferred and erected and used on the receiving lot or lots provided:

i. the by-law reduces the maximum commercial gross floor area permitted to be built on the designated lot by an amount equal to the difference between the total commercial floor area permitted on the lot prior to the passing of one by-law, (excluding any floor area which may be excluded pursuant to Section 1A.42(b)), and the existing gross floor area contained in the buildings to be retained;

ii. the By-law increases the maximum aount of commercial gross floor area which may be permitted to be erected and used on the receiving lot or lots by an amount not exceeding in total the amount permitted to be transferred from the designated lot by subsection (i) above;

iii. a by-law has not been previously passed under this Section or Section 3A.5(f) and approved by the Ontario Municipal Board which applies to any of the lots;

iv. the designated lot does not exceed 0.4 hectares in area (for the purposes of this Plan, the area of any parcel of land which abuts any of the lots at any point shall be included in calculating the area of those lots, if the owner or owners of the lot owns a legal or equitable interest in the parcel, is the beneficiary of a trust in respect of the parcel, or owns or is beneficiary of a trust of shares in the capital stock of a corporation which owns a legal or equitable interest in the parcel for the benefit of which such an interest is held);

vi. the by-law prohibits the erection of a building on any receiving lot or lots of a building in which the commercial density and the residential density or residential fsi density exceed the limits determined by the mixing formula as set out in Section 3A.2(b), Section 3A.3(b) or Section 3A.4(b), in the case of a lot located in a Medium Density Mixed Commercial-Residential Area, High Density Mixed Commercial-Residential Area or the Financial District, respectively;

vii. the by-law prohibits the erection or use of any residential density remaining on, or transferred back to, the designated lot except in the event that the historic building is destroyed by an Act of God;

viii. the retention, maintenance and use of the designated building are secured by the City in an appropriate legal agreement;

ix. Council has determined that in its opinion, a development on the designated lot incorporating the historic building is not realistic or desirable; and

x. the application in respect of the designated lot is accompanied by a renovation plan and/or a plan for the future use of the building and such plan or plans is approved by Council.

Council may consider distances between the designated lot and any receiving lot in excess of 150 metres provided:

i) Council is satisfied that the transportation system serving the receiving lot will not be adversely affected by the transfer and;

ii) Council is satisfied that the price of density rights to be transferred bears a satisfactory relationship to the fair market value of the land and that this price also bears a satisfactory relationship to the value of density rights at the receiving lot.

1A.42(f) Council shall review the effectiveness of the policy set out in Section 1A.42(e) in securing the retention of buildings and structures which have been designated as having historic or architectural value or interest, at least once every five years and include in such review and assessment of the impact of the policy on the total amount of commercial floor area approved and constructed during the five year period.

Robert E. Millward
Commissioner

BL/if

Appendix 1

Correspondence dated September 22, 1986,
from Mr. Michael E. Beatty,
of Royal LePage, Commercial Real Estate Services,
33 Yonge Street, Suite 1000 Toronto, Ontario M5E 1S9

"Shortly after the report of the Planning and Development Department on the above topic was submitted to your Committee on June 11, 1986, I began a study of this subject with some others who are professionally active in this field. I personally have had an involvement starting in 1979 when we acted on behalf of St. Andrews Church. The result of these considerations are recommendations which were put forward to the Commissioner of Planning and Development and members of his staff on September 17th, 1986.

I believe that the mixed commercial-residential zoning applied to the Central Area in Part I of the Official Plan ten years ago was a stroke of genius. Its concept of reintroducing residential into the downtown was essential to its survival. Unfortunately, the results of the past ten years point out that its application has left something to be desired. It would be remarkable if it were not so.

Landowners wishing to vary their situations, did so either under the "small sites" density transfer policy (3A.5(f)) or amendments to the Official Plan.

The problem which initiated (necessitated) your current review was caused in my opinion by several factors, one being that the "small sites" density transfer policy discriminated between properties merely due to their size. Properties over an acre (.405 hectare) did not qualify, so the only recourse was to apply for an Official Plan Amendment.

When the public saw the amendment they felt that it broke all the rules of 3A.5(f), mistakenly thinking that 3A.5(f) was the policy for all transfers, not just "small sites". They were confused and perceived that chicanery was taking place.

This feeling was strengthened by the unfortunate choice of name for the procedure. The public was under the misconception that "air rights" were magically pulled out of the blue and given as extra density. If the procedure had been titled the "exchange of densities" policy, it would have been clear that no new density

was being created, that one property had decided that its location was best suited for commercial development, and the other property was more appropriate for residential uses.

I feel that it is unrealistic to expect all mixed Commercial-Residential lands, with part commercial and part residential density to build both. Commercial uses are appropriate in certain sections of each area and residential more desirable and relaxing when set back from the commercial hustle. I feel that the Official Plan Part I did not provide adequate provision and flexibility for all the landowners to select the most appropriate and viable use for their site.

I have attached a summary of the recommendations which I feel address the discrimination and flexibility, without jeopardizing the objectives of the Official Plan, or inequitably introducing any new density into the Central Area.

I respectfully request that you consider these suggestions and possibly ask the Commissioner of Planning and Development to report on them. It is my feeling that the Planner's recommendations currently before you will not cure the basic problems which necessitated this review. Larger sites will be unable to use section 3A5(f) as amended and the public will be as confused as before when all you can do is grant an Official Plan amendment, that will again be perceived to be breaking all of the new "density transfer rules".

I will be in attendance at the special Land Use Committee meeting on September 24th to attempt to answer any questions your committee might have."

Appendix 2

Summary of proposed "Exchange of Densities" policy recommended by Michael Beatty, Royal LePage Real Estate Services Ltd. to replace the current "Transfer of density for small sites" policy Section 3A.5(f), City of Toronto Official Plan Part I.

1. This would be a policy which allows Mixed Commercial-Residential sites to exchange commercial density for residential density on a square foot for square foot basis.

2. This policy would allow sites to exchange all or part of their commercial or residential density with other lots.

3. At no time would any of the lots involved in such exchanges have any more total density on them individually than the mixing formula amount permitted under the Plan.

4. Exchange can be made between more than two Central Area lots which are designated Mixed Commercial-Residential (Low, Medium, High and Financial District).

5. Density would only be permitted to be exchanged once.

6. There would be no restriction on the size of any lot involved in the exchange(s) of densities.

7. Exchanges of densities would be permitted so long as the lots were within 2,000 metres (1.25 miles) of each other.

   Note: The area in question, Front Street to the C.P.R. tracks (north of Bloor St.), is only 1.25 sq. miles approximately, being roughtly 4,000 metres (2.5 miles) by 800 metres (.05 miles). This is a relatively small area 1.25 square miles when compared to the area of Metro Toronto - 244 sq. miles.

8. It is proposed that each lot receiving "exchanged or transferred" residential density would have an obligation to do one of the following:

   (a) develop the residential density received from the other lot(s) on its site, or

(b) substitute a suitable site upon which the amount of residential could be constructed (a "surrogate" site) if the receiving lot was felt to be unable or inappropriate for such development,

(c) provide some City objective, i.e.

- Historic preservation
- Community facility

(d) make a payment "in lieu of development" to an agency approved by Council for the provision of assisted housing.

The "in lieu of" payment ((d) above) could be set up initially to guarantee that one of the above commitments (objectives) was realized.

9. Lots with buildings which comprise less than seventy percent (70%) of their permitted mixing formula coverage would be permitted to exchange unused densities with other lots.

Appendix 3

Address the seven disadvantages put forward in the June 1986 Policy Review and Recommendations report by the Planners.

i) Undermine the balance of uses that the Plan seeks to achieve (Section 2.1 pg 4).

Response: The only apparent imbalance in the achievements desired from the Plan appears to be in the "affordable/assisted" housing sector. Private housing exceeds its targets and office development has not exceeded its quinquennial target.

Allowing hotel development in the Financial District to use residential density similar to most other mixed density areas would allow the hotels to locate where they are needed at reasonable land costs.

ii) Potential to upset the local transportation balance (Section 2.1 pg 4).

Response: The transportation balance would not likely experience any local problems as the office development trend is favouring the Financial District, which is well serviced by subways and GO train service. The Financial District has increased by 9 million square feet in the past 10 years while the balance of the Central Area increased by 7 million square feet. Currently construction favours the Financial District 3 million square feet to only 89,000 square feet which is underway in the balance of the Central Area.

The Financial District and the subway nodes at Dundas, College and Bloor area the most likely locations for office development. All area well serviced form a transportation standpoint. This will leave the areas between for in-filling with substantial residential development, which in itself reduces the transportation problem.

iii) Could accelerate the rate of office growth by creating a more elastic supply (Section 2.1 pg 5).

Response: We believe that a policy of unlimited density exchanges would concentrate the future development of these sites with the most desirable amenities and best serviced by transportation. Future office development will not be fueled by supply, but rather by demand. When supply exceeds demand land prices are held in check.

In 1975 the Central Area office space represented 67% of Metro's total. In 1985 it only represents 54%. The quinquennial report will show that the Plan is right on target and the TTC is not being twisted out of shape.

iv) Might impact on the policy of the Plan, to promote office deconcentration (Section 2.1 pg 5).

Response:

Toronto C.M.A.	1975	1985
office space total (in square feet net rentable)	50.3 million	91.5 million
Central Area	33.6 million (67%)	49.7 million (54%)
Balance C.M.A.	16.7 million (33%)	41.8 million (46%)

Office decentralization is alive and well and flourishing in the Toronto Census Metropolitan Area. Infact the successes being achieved in other areas might be of concern to the City in the long run.

v) Speculation could have a serious destabilizing effect on the land market. (Section 2.1 pg 5).

Response: We do not believe that a freer exchange policy would have a destabilizing effect on land values. It should lower costs as competition for exchanges would bring market forces to bear, and the trades would produce more residential, both private and assisted.

vi) Could result in a "housing" site for which housing is unlikely to ever materialize (Section 2.1 pg 5/6).

Response: The reasons that such a situation occured in the past was due to the 150 metre rule. The residential wound-up on an inappropriate site, and the entire commercial was developed on the most appropriate of the two sites.

Most of the land in question, is either zoned CR L8 U480 (K-12) or CR L4.5 U850 (K-7.8). Taking an average for a square foot of each, the current values attributable to commercial and residential would show the following for one square foot of each;

Sq. Ft. Land Zoned	Commercial			Residential		
a) CR L8 U480 (K-12)	gfa $50	(coverage) (8x)	total $400	gfa $10	(coverage) (4x)	total $40
b) CR L4.5 U300	$40	(4.5x)	$180	$15	(3.3x)	$49.5

If a particular development site does not lend itself to a mixed-use development, and few sites (no matter what size) have developed this way during the past ten (10) years, then the owner will find that his residential land cost is only 10-20% of his total and the residential is no big financial loss if left unbuilt.

Under our proposed policy the receiving site(s) will either develop residential or help fund its development elsewhere.

vii) In developing the Central Area Plan certain assumptions were made about sites that were unlikely to be developed during the life of the Plan (Section 2.1 pg 8).

Response: You have to be a brave man to tell a land owner that you were only kidding when you developed the Plan and alloted a specific density to his/her land.

We know that all the undeveloped land or buildings nearing for redevelopment will not come on the market at once. A marketplace free to operate with flexibility, predictability and as little interference as possible will produce what the market can absorb, and what the system can support.